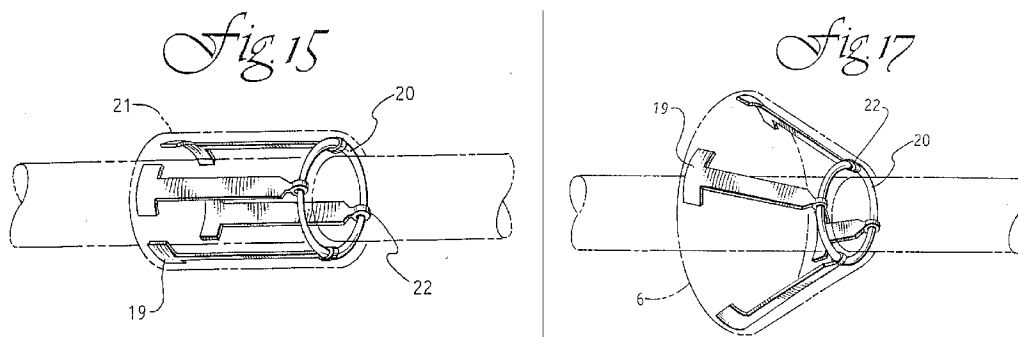


REMARKS

This Response is made to the Office Action dated December 5, 2008. Claims 23, 24, 26, 27, 29, 31, 33-35, 37, 38 and 41-44 are currently pending. Favorable reconsideration of the pending claims is requested in view of the remarks below.

Claims Rejected under 35 U.S.C. § 102(b)

Claims 23, 24, 26, 27, 29, 31, 33-35, 37, 38 and 41-44 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,794,928 to Kletschka (the "Kletschka patent"). The Examiner has identified the "directional member" in the Kletschka patent as the component referred to as an expansion stent 19. The Examiner further identifies the embodiments of Figures 17-25 as showing that the directional member has a truncated conical shape. Applicant strongly disagrees with the Examiner's position that a directional member is even disclosed in the Kletschka patent. Applicant bases its position on the fact that all of the embodiments disclosed in the Kletschka patent lack a directional member made from a pliable material having properties of blocking the passage of the fluid and the emboli and **being expandable by the fluid flow in the body vessel**. The embodiment of Figures 15 and 17, reproduced below, shows the expansion stent 19 collapsed (Figure 15) and expanded (Figure 17).



However, fluid flow in the body vessel does not expand this component 19 or the structure connected to it. Rather, as is clearly disclosed in the Kletschka patent, these expansion stents form an expansion mechanism which is designed to expand the structure. The Kletschka patent states the following at column 8, lines 63-66 regarding then use of mechanical devices, rather than inflation means, to expand the trap/barrier 6:

Alternatively, the trap/barrier 6 or trap/barrier membrane 23 can be expanded with a supporting **expansion mechanism**. **FIGS. 14 through 18** depict some possible supporting **expansion mechanisms**. [Emphasis added]

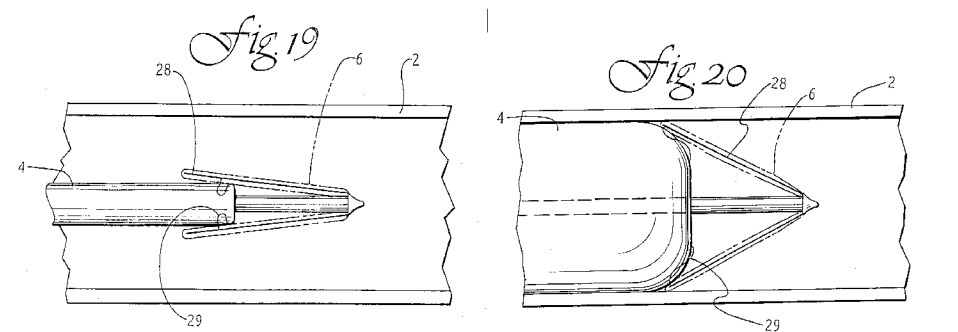
This structure identified by the Examiner as the "directional member" in Figures 15-18 is an expansion mechanism which utilizes biasing means for expanding the structure, not the fluid flow in the body vessel. Moreover, Applicant submits that these expansion stents 19 do not form a truncated conical shape, as required in the claims. Each expansion stent 19 is clearly shown as individual struts or splines connected at a ring 20. When viewed alone, the expansion structure disclosed in Figures 15-18 simply does not form a truncated conical shape. Applicant submits that the material attached to this expansion mechanism does have a truncated conical shape. However, the claims call for the directional member, not the filtering member, to have this truncated conical shape. For this reason alone, the embodiment relied on by the Examiner fails to disclose the claimed invention.

Additionally, the embodiments of Figures 15-18 fail to disclose **a filtering member attached to the directional member the filtering member being expandable** by the expansion of the directional member. This expansion mechanism of Figures 15-18, which includes the expansion stents 19, is simply attached to a catheter shaft. It is not known if this embodiment utilizes the removal apertures 14 disclosed in Figure 13b or the filter material with openings disclosed in Figure 12. However, assuming *arguendo* that the material attached to the expansion mechanism includes openings, such as those shown in Figure 12, then the filtering member would have the truncated conical shape, but the expansion mechanism still lacks the shape required by the pending claims. Lastly, the embodiments of Figures 15-18 lack a plurality of restraining wires attached to the directional member and extending along the length of the elongate member so that the restraining wires can be retracted from a location outside the body vessel to collapse the directional member. No such wire are shown. For at least these additional reasons, the embodiments of Figures 15-18 fail to disclose the basic structure recited in the rejected claims.

The embodiment disclosed in Figures 19-25, which was also relied upon by the Examiner in rejecting the claims, likewise lacks the particular structures recited in the pending claims. Figures 19-25 show the barrier/trap 6 constructed such that a balloon 4 is needed to expand it within the body lumen. First, the Kletschka patent states the following at Column 9, lines 37-42:

If properly situated with respect to the balloon 4, the trap/barrier 6 could also be **expanded** and retracted by the action of the balloon 4 **as the balloon 4 is expanded** and retracted. FIGS. 19 through 22 depict an expansion means comprised of a plurality of expansion leaves 28 and shroud lines 29.

This particular embodiment also lacks a structure which includes a directional member that is expandable by the fluid flow. Figures 19 and 20, reproduced below, show how this embodiment is expanded. As is clearly described in the Kletschka patent, the



barrier 6 is shown and described as being expanded by the balloon 4, not the flow of the fluid in the body vessel. This embodiment additionally fails to disclose **a filtering member attached to the directional member the filtering member being expandable** by the expansion of the directional member. Again, the barrier 6 is depicted as being attached to a catheter shaft. It is not known if this embodiment utilizes the removal apertures 14 disclosed in Figure 13b or the filter material with openings disclosed in Figure 12. Again, assuming *arguendo* that the material attached to the expansion mechanism includes openings, such as those shown in Figure 12, then the filtering member would have the truncated conical shape, not the directional member, as required by the pending claims. Lastly, the embodiment of Figures 19-25 lack a plurality of restraining wires attached to the directional member and extending along the length of

the elongate member so that the **restraining wires can be retracted from a location outside the body vessel** to collapse the directional member. The shroud lines 29 of the Kletschka device are shown attached to the balloon 4 and the barrier 6. These shroud lines 29 do not extend outside of the body vessel during usage. For at least these reasons, the embodiment of Figures 19-25 also fails to disclose the basic structure recited in the rejected claims.

Some of the claims further require a shaft member which is slidably disposed in the lumen of the elongate tubing for moving the filtering portion and filtering member out of the lumen of the elongate tubing. Such a component is not disclosed anywhere in the Kletschka patent.

For at least these reasons, the Kletschka patent fails to disclose the particular structures defined in the pending claims. Applicant respectfully requests the Examiner to withdraw the Kletschka patent as an anticipatory reference.

The Previously Submitted IDS

The Examiner indicates that the previously submitted IDS lacked a concise explanation of the relevance of the foreign reference cited in the IDS and on that basis completely disregarded from consideration the other cited references which were properly identified in this IDS. Applicant believes that the Examiner should have considered on the merits the other references which were properly cited and should have simply disregarded the single foreign reference from consideration.

Applicant submits herewith a separate document which provides a concise summary of the relevance of the cited French reference along with an Abstract obtained from the European Patent Office. Applicant respectfully requests the Examiner to consider all of the references cited in the previously submitted IDS on the merits.

In view of the foregoing, it is respectively urged that all of the present claims of the application are patentable and in a condition for allowance. The undersigned attorney

can be reached at (310) 824-5555 to facilitate prosecution of this application, if necessary.

In light of the above amendments and remarks, Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

The commissioner is authorized to charge any deficiencies in fees or credit any overpayments to our Deposit Account No. 06-2425.

Respectfully submitted,

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